

<sup>2</sup> 47 U.S.C. § 503(b).

2. The agent found that PGA Tour had established the station to provide golf scoring data to broadcasters who would be covering the Buick Invitational Tournament later that week at the Torrey Pines golf course. The agent also found the station had been operating continuously for one week, had no capability to monitor the channel for other activity and was not transmitting any station identification. The PGA staff operating the station acknowledged that the frequency had been briefly monitored prior to commencing operation, but no subsequent monitoring of the frequency had occurred.

3. The FCC's database reflects that station WPSE606 is authorized operate on 469.175 MHz nationwide. However, the authority for frequency 469.175 MHz is limited to voice transmissions under the emission designator 11K2F3E ("F3E"). The agent advised the PGA Tour staff that there appeared to be no authority for data transmission for 469.175 MHz and that their station was disrupting other authorized users. PGA Tour immediately ceased operations on 469.175 MHz.

### III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty.<sup>3</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the act more than once or for more than one day.<sup>4</sup>

5. Section 1.903(a) of the Rules requires PLMRS stations to be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the FCC. Each station authorization contains the technical data specifying how a station should operate, including frequency, power and type of emission. The PGA Tour is authorized only voice F3E type emissions, but chose to operate this station with a non voice data signal. Therefore, PGA Tour willfully and repeatedly violated Section 1.903(a) of the Rules by transmitting a data signal for several days up to and including February 10, 2003, on station WPSE606 on frequency 469.175 MHz without authority to use any non voice emissions.

6. Section 90.403(e) of the Rules requires PLMRS licensees to take reasonable precautions to avoid causing interference, including monitoring the transmitting frequency for communications in progress and other measures as may be necessary to minimize the potential for causing interference. The PGA Tour setup a radio transmitter to relay data to a central point and left the unit operating

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

continuously for several days with no meaningful data transmissions without engaging in any monitoring of the frequency. The station had no capability to monitor the communications channel or to determine if others were operating. Therefore, PGA Tour willfully and repeatedly violated Section 90.403(e) of the Rules by operating station WPSE606 for several days up to and including February 10, 2003, on frequency 469.175 MHz without monitoring the transmitting frequency and by transmitting unnecessary signals that prevented the frequency from being used by others.

7. Section 90.425(a) of the Rules requires PLMRS stations to be identified at regular intervals (every fifteen minutes in this case) whenever stations are used in a continuous mode. Licensees share frequencies in this radio service and station identification is essential. In order to resolve problems that may arise from time to time when frequencies are shared, being able to identify other users is critical to resolving an interference problem. PGA Tour failed to identify their station at any time or have the capability to identify their station, which compounded the problem to resolve the interference to Gifford for several days. Therefore, PGA Tour willfully and repeatedly violated Section 90.425(a) of the Rules by failing to identify station WPSE606 on frequency 469.175 MHz for several days up to and including February 10, 2003.

8. Based on the evidence before us, we find that for several days up to and including February 10, 2003, PGA Tour operated station WPSE606 on frequency 469.175 MHz with an unauthorized emission, caused interference to another licensee and failed to use a station identifier in willful and repeated violation of Sections 1.903(a), 90.403(e) and 90.425(a) of the Rules. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>5</sup> the base forfeiture amount for operating with an unauthorized emission is \$4,000, for causing interference is \$7,000 and for failing to operate without a station identifier is \$1,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> In applying Section 1.80(b)(4) of the Rules and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amounts. Therefore, a total forfeiture in the amount of \$12,000 is warranted.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, PGA Tour, is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for violating Sections 1.903(a), 90.403(e), and 90.425(a) of the Commission's Rules.<sup>7</sup>

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<sup>5</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 1.903(a), 90.403(e), and 90.425(a).

## Federal Communications Commission

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10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, PGA Tour SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P. O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Account No 200332940005 and FRN 000-467-4693.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554 and must include the NAL/Acct. No. 200332940005.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>8</sup>

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>8</sup> See 47 C.F.R. § 1.1914.

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16. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail, return receipt requested, to PGA Tour, 112 PGA Tour Boulevard, Ponte Vedra Beach, Florida, 32082.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.  
District Director - San Diego Office

Enc: Attachment A



## FCC List of Small Entities

As described below, a “small entity” may be a small organization,  
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer  \$12.5 Million in Annual Receipts or Less
Cable and Other Program Distribution	
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	
<b>Note:</b> With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 C.F.R. §121.104 and 13 C.F.R. § 121.106, respectively.	
<i>International Services</i>	
International Broadcast Stations	
International Public Fixed Radio (Public and Control Stations)	

Fixed Satellite Transmit/Receive Earth Stations	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
	Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHZ Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - <b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	



	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<b>Miscellaneous</b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

